

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARSEN
CIVIL APPEAL NO. E081 OF 2025

TWAIBA KHALIF ABDALA.....APPELLANT/APPLICANT

-VERSUS-

ABDALLA KHALIFA ABDALLA1ST
RESPONDENT

HAFSWA KHALIFA ABDALLA.....2ND
RESPONDENT

RULING

1. The Appellant/Applicant has filed an application dated 19th December 2025 seeking for orders that:
 - 1) Spent
 - 2) Spent
 - 3) That this Honorable court be pleased to order stay of execution of the ruling delivered on the 16th September 2025 in Lamu Succession No. E035 of 2025 by Hon. Mursal Sizi pending the hearing and determination of the appeal.
 - 4) That costs of this application be provided for.
2. The application is based on grounds stated on the face of the application and supported by the affidavit of the Applicant sworn on the even date.
3. The Applicant's case is that she is dissatisfied with the judgment of the Kadhi's court in which the Honourable

Kadhi ordered that properties Nos. Lamu/Pate/Settlement Scheme/214 and Lamu/Pate/Settlement Scheme /501 form part of the estate of the late Khalifa Abdalla Bekenana when the said properties are not registered in the name of the said deceased person but in the name of the Applicant. She contends that the Kadhi`s Court had no jurisdiction to entertain the dispute as the same falls under the jurisdiction of the Environment and Land Court. Therefore, that unless stay of execution is granted, she stands to suffer irreparable loss as she will lose her said properties as a Notice to Show Cause has already been issued by the Kadhi`s Court. That her Memorandum of Appeal discloses an arguable case with high chances of success.

4. The application was opposed by the Respondents vide the replying affidavit of the 1st Respondent in which he avers that the appeal filed herein does not raise any substantial ground worth consideration by this court. More so that the applicant has not demonstrated the nature of prejudice she stands to suffer in the event that execution is allowed to proceed. That the properties in issue are fixed properties whose ownership can revert back to the applicant if the appeal succeeds. That it is only fair and just if execution is allowed to proceed.
5. The application was canvassed by way of written submissions of the respective counsels for the parties. Counsel for the Applicant submitted that the appeal herein has overwhelming chances of success as the Hon. Kadhi

did not have jurisdiction to entertain a dispute on ownership of property in a succession cause. That it is the Environment and Land Court which is vested with that jurisdiction.

6. It was submitted that if the application is not granted the appeal shall be rendered nugatory as the Applicant will be arrested and forced to sign off property yet the same is not part of the estate of the deceased. That this will occasion him loss and damage.
7. On security it was submitted that the matter emanated from a succession dispute and the parties are siblings. That in those circumstances the applicant should not be compelled to deposit security as there is no apparent loss likely to be suffered by the Respondents. The Applicant urged the court to allow the application.
6. Counsel for the Respondents on the other hand submitted that the application does not meet the threshold of stay of execution as provided under Order 42(6) of the Civil Procedure Rules, 2010. That the applicant has not demonstrated any specific or identifiable loss that she stands to suffer. Additionally, that the Applicant remains a beneficiary of the estate and stands to benefit from the legal distribution of the estate.
7. It was submitted that though the application was filed without unreasonable delay, the unreasonableness of the intended appeal out-weighs the arguability of the appeal.

8. On the issue of security, it was submitted that the Applicant has in her submissions failed to express willingness to deposit security.

Analysis and determination

9. I have given due consideration to the pleadings and the submissions filed in this application. The main issue for determination is whether the application has merit and whether the orders sought should be granted.
10. An Applicant for stay of execution pending appeal has to satisfy the conditions set out in Order 42 Rule 6(2) of the Civil Procedure Rules, 2010. These are that:
- (1) The application was brought without unreasonable delay.**
 - (2) The Applicant will suffer substantial loss unless the orders sought are granted.**
 - (3) The Applicant has given security for due performance of the decree as may be binding on him.**
11. There is no dispute that the application herein was filed without unreasonable delay. It is the other two issues that are in contention.
12. The Applicant argues that she will suffer irreparable loss if execution is allowed to proceed as she will lose her property that is registered in her name. The Appellant on the other hand argues that the property can revert to the Applicant if the appeal succeeds.

13. I have considered the issue of substantial loss. In my view the Applicant will suffer substantial loss if execution proceeds and the appeal is eventually successful even if the property may eventually revert to her. The fact that she will have to use money to have the property revert to her name would amount to substantial loss.
14. The third condition for grant of stay of execution pending appeal is that the Applicant has to offer security for the due performance of the decree. This is meant to give the Respondent something to fall back to in the event that the appeal is not successful. In **Arun C. Sharm Vs. Ashana Raikundalia T/A/Rairundalia &Co. Advocates & 2 Others [2014] eKLR**, the court stated:
- “The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor...”**
15. The appeal pending herein concerns a succession dispute between family members. In my view it is not necessary to deposit security in the circumstances of this case.
16. I have considered the memorandum of appeal herein. I find that the appeal raises a triable issue on whether the Kadhi`s court had the jurisdiction to entertain the suit where the property was not registered in the name of the deceased person.

17. In view of the foregoing, I find the application to be merited. Stay of execution is thereby granted in terms of prayer 3 of the Notice of Motion pending hearing and determination of the appeal.
18. Orders accordingly. Costs of the application to abide by the outcome of the appeal.

Delivered, dated and signed at GARSEN this 7th day of May 2026.

**J. N. NJAGI
JUDGE**

In the presence of;

Mr. Mutana for Appellant/Applicant

Mr. Soita for Respondents

Court Assistant: Nasra